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Road bill becomes pay-to-play battlefield

States seeking to fight corruption in federally funded projects meet resistance in the Senate.

By **Larry Eichel**
Inquirer Staff Writer

The two versions of the highway funding bill passed by Congress this year differ in many ways. One difference has to do with pay-to-play politics.

The House bill contains language explicitly acknowledging the right of states to take action to prevent corruption in the government contracting process. The Senate bill does not.

If that language is not in the final version, the effect could be to discourage states and localities from enacting pay-to-play legislation of their own. So say several nonpartisan lobbying groups that are seeking to limit the influence of money in politics and government.

"The message would be: 'Don't go down this road,' " said Meredith McGehee of the Campaign Legal Center, based in Washington.

What particularly riles backers of the so-called Government Contracting Reform Amendment is that federal law already bans political contributions - the "pay" in pay-to-play - from federal contractors.

"So why shouldn't states be allowed to do it, if they want to, one state by itself, any state that wants to do it?" Sen. Frank J. Lautenberg (D., N.J.) asked during the debate on the Senate floor. "This amendment simply allows states to enact similar reforms, when they so choose."

The proposal's opponents, who include top officials at the Federal Highway Administration (FHWA), say that the amendment would hurt taxpayers by reducing competition in the government contracting process and would unfairly penalize companies that make political contributions.

"If you're going to have contribution limits, have them for everybody, not just contractors," said Jeffrey D. Shoaf of the Association of General Contractors. "Our position is that the procurement system should be open to everyone who wants to compete for the work. That's in everybody's best interests."

This episode, which has its roots in New Jersey and obvious resonance in Philadelphia, shows how hard it can be to try to change a political culture in which donors are perceived to have an advantage in securing government work. Change is especially difficult when several levels of government and several layers of public funding are involved.

The saga began in Trenton last October, when then-Gov. James E. McGreevey issued Executive Order 134 not long before he resigned. The order prohibited any state agency from awarding a contract exceeding \$17,500 to any business that had contributed more than \$300 to various political organizations.

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Shortly thereafter, FHWA officials said the order, no matter how well-intentioned, was illegal. So long as it was in place, they would block all highway funds for New Jersey.

The problem, they said, was that the rules for contracts involving federal highway dollars require a bidding process open to all. By law, New Jersey couldn't shut out anyone, political donors included, except in an emergency or to make the process more cost-effective. And neither exception applied.

In January, the state filed a federal lawsuit against the FHWA and its parent agency, the U.S. Transportation Department, asking for a temporary restraining order to prevent the withholding of money. When the request was denied, acting Gov. Richard J. Codey made two moves.

He got the Legislature to enact pay-to-play rules that exempted federally funded highway contracts, at least temporarily, thereby freeing the federal money until the matter could be resolved.

And he secured the aid of the New Jersey congressional delegation in an attempt to make the pending lawsuit unnecessary by inserting language into the highway bill to confirm the state's position.

Thus was born the proposed amendment, which stated that nothing in the federal highway statute "prohibits a state from enacting a law or issuing an order" limiting political contributions by contractors.

It passed the House on a voice vote. But then several pro-business lobbying groups noticed what was going on.

Organizations such as the U.S. Chamber of Commerce argued that the amendment was unnecessary since federal highway contracts already are awarded on an open and competitive basis.

In a letter to the Senate, R. Bruce Josten, the chamber's executive vice president, wrote that the language also "would adversely affect the ability of business leaders to support candidates... while other groups would not be impacted."

During the debate on the Senate floor, Jon S. Corzine (D., N.J.), the measure's prime sponsor, argued: "The corrupting influence of money in our political system is out of control. The federal government is penalizing New Jersey and other states for enacting laws that reduce corruption and increase competition for federal contracts."

But the opposition was unmoved. Several senators noted that pay-to-play laws in other states - notably Kentucky, Ohio, South Carolina and West Virginia - apply primarily to no-bid deals involving only state money, not competitive contracts with federal funds.

In the end, the amendment was tabled by a 57-40 vote. Most Republicans, including Arlen Specter and Rick Santorum of Pennsylvania, voted to put it aside; most Democrats tried to keep it alive.

"It's a test case on the [anti-pay-to-play] drive that has been spreading across the country," said Craig Holman, campaign finance lobbyist for Public Citizen, a watchdog group founded by Ralph Nader. "If the Federal Highway Administration can get away with this, I don't see why other federal agencies can't do the same thing."

Corzine, Lautenberg and Codey have pledged to work to get the amendment included in the final bill, which will emerge from a conference committee. So have Reps. Frank A. LoBiondo (R., N.J.) and Bill Pascrell Jr. (D., N.J.), who sponsored it in the House.

Failing that, there is the lawsuit, and many months of uncertainty about what can be done to address pay-to-play.

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